

RIGHTS OF THE PRISONERS

'Right to life' and 'personal liberty' guaranteed under Article 21 of the Constitution include the right of convicts or jail inmates to have conjugal visits or artificial insemination (in alternate). However, the exercise of these rights are to be regulated by procedure established by law, and are the sole prerogative of the State.

- Punjab and Haryana High Court

Introduction:

There are three major components of criminal justice system as-police, courts and prisons (correctional homes). Prisons are established for two purposes- to correct the prisoners and to keep them separate from the society. There are two types of prisoners: under-trial (who are presumed innocent until found guilty by the court) and convicted (who no longer carry presumption of innocence). Being prisoners does not mean that their all rights are ceased rather they have various rights in prisons also. In other words, imprisonment does not deprive prisoners of all or every basic right which the ordinary citizens enjoy. Prisoners are also human beings and as such they retain their rights even when in prison. Prisoners' rights are based on the principle that prisoners, even though they are deprived of liberty, are still entitled to basic human rights.

Recently, the Punjab and Haryana High Court, in the case of *Jasvir Singh & another v. State of Punjab & others* (2014), has ruled that the "right to procreate" of a convict falls within the Right to Life and Personal Liberty guaranteed under Article 21 of the Constitution of India. The decision of *State of Andhra Pradesh v. Chalam Krishna Reddy* (2000) 5 SCC 712, was relied upon to urge that a prisoner whether convict, undertrial or a detainee, continues to enjoy the Fundamental Rights including 'right to life' which is one of the basic Human Rights. This judgment has accelerated the discussion on the issue

of prisoners' rights.

Rights of Prisoners:

Regarding prisoners' rights, at the international level, there are various norms among them *Standard Minimum Rules for the Treatment of Prisoners* adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders is very important. Further, *Basic Principles for the Treatment of Prisoners*, 1990 says that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings and all prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality. The Hon'ble Supreme Court in *D. Bhuvan Mohan Patnaik & others v. State of Andhra Pradesh & others*, (1975) 3 SCC 185 declared that convicts cannot be denied the protection of fundamental rights which they otherwise possess, merely because of their conviction. convict whom the law bids to live in confinement though stands denuded of some of the fundamental rights, like the right to move freely or the right to practice a profession, nonetheless, such convict shall continue to enjoy other constitutional guarantees including the precious right guaranteed by Article 21 of the Constitution. *Francis Coralie Mulin v. The Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 expanded the expression "personal liberty" embedded in Article 21 of the Constitution in the context of the rights of a detainee and it held that the prisoner or detainee has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarceration.

Though, the convicted prisoners' rights are, for some extent, less than under-trial prisoners but following are some rights which are applicable to all prisoners-

Right to Dignity- The right to dignity is now-a-

days accepted as the highest human right which is contentious and controversial issue for prisoners. Generally, it is said that prisoners have no right to dignity. One question can give answer that- are prisoners human beings? Of course they are! Then they have this right. This means that a prisoner retains his human dignity in all circumstances. His/her right to human dignity is inviolable in all circumstances irrespective of the type of crime he committed. In fact, every person has right to dignity and it is totally immaterial whether the person is prisoner or not. It is the duty of prison authorities to create an environment where prisoners can feel as human being without any discrimination on race, class, age, gender, language etc.

Right to Make a Telephone Call- The prisoners have the right to make a telephone call to his country origin. If any prisoner requests to Superintendent of the prison, he has to avail this right to him/her. As Delhi High Court in *Gulam Mustafa Qureshi v. State* has ruled that without compromising the security of the jail and other such relevant considerations, the facility of making telephone calls must be provided to under trial prisoners. Further, the Court observed that whenever a request is made to Jail Superintendent for permission to make a telephone call the Jail Superintendent will enter the details of called number, the duration etc. A speaker phone with a caller I.D. can be installed to ensure that the person called is the one in respect of whom the request is made by the prisoner.

Right to Privacy- Undoubtedly, the prison officials can monitor prisoners' movements throughout prisons, watch prisoners in their cells, and conduct warrantless searches inside prisons but it does not mean that the prisoners have not right to privacy but unlike a free citizen. Prisoners have a right to privacy regarding their health. Prison officials may only disclose health information, including the results of an HIV test, with the informed consent of the concerned prisoner. The World Health Organization has recommended that any kind of marking or coding of a prisoner's file or cell to indicate HIV status should be prohibited. If prison officials know about the HIV status of a prisoner, they may only tell someone else if the prisoner has given them permission to do so.

Right to Freedom of Religion- Every inmates of

the prison have the right to freedom of religion and prison authorities must provide inmates opportunities to practice their religious faith. Inmates can obtain and keep written religious materials, and obey the rules of their religion that do not endanger order and security in the prison. In addition, wherever possible, formal religious observances for groups of inmates must be allowed on a regular basis. Prisoners can have access to religious programs broadcast on radio and television. Actually, different religions within a particular prison must be given equal treatment. If any prison authorities violate this right it is totally illegal and unlawful. *Standard Minimum Rules for the Treatment of Prisoners* also says that it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Right to Consult Lawyer or Doctor- Prisoners have right to consult their lawyers and doctors. In a landmark judgement in the case of *Francies Corale Mullin v. the Administrator, Union Territory of Delhi & others*, the Supreme Court explained the ingredients of personal liberty under Article 21. The case arose out of the rights of a detainee under COFEPOSA to have an interview with his family members and lawyers. The meeting with family members was restricted to one a month and the lawyer could be met only in the presence of an officer of the customs department. The Supreme Court ruled that the right to life and liberty includes his right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without these severe restrictions.

Right to Meet spouse or Next-to-kin- Prisoners must be allowed under necessary supervision to communicate with their family and friends at regular intervals, both by correspondence and by receiving visits.

Right to equality and non-discrimination- There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Right against Torture, Cruel, Inhuman or Degrading (insulting) Treatment- International Covenant on Civil and Political Rights, 1966, binding principle at an international level says that all persons deprived of their liberty shall be treated with

humanity and with respect for the inherent dignity of a human person. In particular, the prisoners will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment.

Right to Adequate Food, Water and Nutrition-

Every prisoner must be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it.

There are some other important rights also which need attention of State as-

- To receive meals from the State.
- To receive clothing, bedding, and items of daily use.
- To receive and write letters (subject to censorship);
- If a female prisoner with infant is admitted into prison custody such infant must be supplied with all necessary requirement by the State.
- If any pregnant prisoner is in prison, she must be availed proper facility for delivery as well as after delivery her infant must be provided all facilities so that he/she can be a good citizen of the country.
- In general circumstances not to be assaulted by prison authorities.
- A prisoner, except exceptional conditions, in transit between prison and court is free from handcuffs.

Standard Minimum Rules for the Treatment of Prisoners provides some other norms as-

- a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
- b) Untried prisoners shall be kept separate from convicted prisoners;
- c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- d) Young prisoners shall be kept separate from adults.

e) All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

f) The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

g) Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

h) All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

i) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

j) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

Right to Information- In *Viresh Shandilya v. Union of India and Others*, PLR (2005) 139 P&H 357, the High Court adjudicated various issues dealing with the rights of prisoners including the issue of cable TV facilities to prisoners in the Model Jail, Buraill, Chandigarh. The Court observed that "in our view, the "under-trials" as well as the "prisoners" lodged in the Model Jail Buraill too have a right to information and the television can play a crucial role in that regard and to bring them in the mainstream of the civilized society, it will be too hard and anti-thesis of international conventions if a complete ban on viewing of TV is imposed."

Right to Conjugal and Family Visits- In the case of *Jasvir Singh & another v. State of Punjab & others* (2014), the High Court directed as under-

- * the State of Punjab is directed to constitute the Jail Reforms Committee to be headed

by a former Judge of the High Court. The other Members shall include a Social Scientist, an Expert in Jail Reformation and Prison Management amongst others;

- * the Jail Reforms Committee shall formulate a scheme for creation of an environment for conjugal and family visits for jail inmates and shall identify the categories of inmates entitled to such visits, keeping in mind the beneficial nature and reformatory goals of such facilities;
- * the said Committee shall also evaluate options of expanding the scope and reach of 'open prisons', where certain categories of convicts and their families can stay together for long periods, and recommend necessary infrastructure for actualizing the same;
- * the Jail Reforms Committee shall also consider making recommendations to facilitate the process of visitations, by considering best practices in the area of prison reforms from across jurisdictions, with special emphasis on the goals of reformation and rehabilitation of convicts and needs of the families of the convicts;
- * the Jail Reforms Committee shall suggest ways and means of enhancing the facilities for frequent linkage and connectivity between the convict and his/her family members;
- * the Jail Reforms Committee shall prepare a long-term plan for modernization of the jail infrastructure consistent with the reforms to be carried out in terms of this order coupled with other necessary reforms;
- * the Jail Reforms Committee shall also recommend the desired amendments in the rules/policies to ensure the grant of parole, furlough for conjugal visits and the eligibility conditions for the grant of such relief;

- * the Jail Reforms Committee shall also classify the convicts who shall not be entitled to conjugal visits and determine whether the husband and wife who both stand convicted should, as a matter of policy be included in such a list, keeping in view the risk and danger of law and security, adverse social impact and multiple disadvantages to their child;
- * the Jail Reforms Committee shall make its recommendations within one year after visiting the major jail premises and it shall continue to monitor the infrastructural and other changes to be carried out in the existing jails and in the Prison Administration System as per its recommendations.
- * the Jail Reforms Committee shall be allowed to make use of the services of the employees and officers of the State of Punjab, who is further directed to provide the requisite funds and infrastructure including proper office facilities, secretarial services, travel allowances and all necessary amenities and facilities, as required by the Jail Reforms Committee.

Concluding Observations:

Hon'ble Supreme Court of India has also played a crucial role to improve the conditions of prisoners through its innovative decisions. The Supreme Court in a separate writ petition filed by Sunil Batra and Charles Sobharaj, two prisoners in Delhi's Tihar jail, made an endeavor to humanize jail conditions. More attention is required to marginalized prisoners like female prisoner with child, pregnant prisoners, disabled prisoners, prisoners infected and affected by HIV/AIDS and child offenders etc. Despite various safeguards and protections, the prisoners face numerous difficulties which need immediate attention. The issues of overcrowding, deaths in prisons need immediate attention of State.

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